

THE CASE

CONCERNING THE Office of Clerk of the Treasury, OR Keeper of the Records of the Court of *Common Pleas*.

IN the Act of Parliament made 15 Hen. 8. It is recited that *George Roll* was deputed and made Clerk and Keeper of the Records of the Common Pleas, remaining in the Treasury, by Sir *Robert Brudenel*, then Chief Justice of the said Court. Which said Keeper or Officer, and all and every Person Exercising the same Office, have heretofore severally been made by the Chief Justice for the Time being, and removed from the Office at the Admission of New Chief Justices at the Pleasure of every such Chief Justice.

And thereupon Enacted that *Roll* should enjoy the Office for Life, by virtue of the Grant made him by the said Chief Justice, notwithstanding Death or Removal of the Chief Justice.

Mich. 10 Car. 1. Sir *John Finch* was made Chief Justice, and upon his coming into that Place by Indenture inrolled in the Exchequer, Sir *John Finch* Covenants and Agrees, that he will not grant any the Offices of *Philizer*, *Exigenter*, *Prothonotarie*, Clerk of the Treasury, or other Offices of that Court to any Person, or admit any Person to the Execution of these Offices, but only such as should be named by the King and his Successors. And would admit and put in to Execute those Places, such Persons as should be so named by the King.

Hilary Term 15 Car. 1. Sir *John Finch* was removed and made Lord Keeper, and Sir *Edward Littleton* made Chief Justice of the Common Bench. But before his coming in, by Indenture dated 25 January, 15 Car. 1. made betwixt the Bishop of London, then Lord Treasurer, and the Lord *Cottingham* then Under-Treasurer, Trustees for the King; and Sir *Edward Littleton* inrolled in the Exchequer, Reciting, That whereas the King did purpose to make Sir *Edward Littleton* Chief Justice of the Common Bench, Sir *Edward Littleton* did Covenant and agree, That he being admitted to the Office of Chief Justice, shall not, or will not by virtue of the same Office, grant or dispose of the Offices or Places of *Prothonotaries*, *Exigenter*, *Philizers*, Clerks of the Warrants, Clerk of the Kings Silver, Clerk or Keeper of the Treasury, Clerk of the Effoines in the said Court, nor admit any Person to the Execution without the special Direction or Commands of the King. And that he will from Time to Time grant and dispose all and every of the said Offices falling void, to such Person or Persons as the King shall nominate; and him and them according to the Custom of the Court, shall and will admit and place.

Pursuant to these Agreements, 10 Car. 1. and betwixt that and 16 Car. 1. there were not less than twenty Patents made by his said late Majesty of these Offices, some in Possession, some in Reversion, as by the Records thereof appears; and in every of these Patents express notice taken of the said Covenant and Agreement, and a Command to the Chief Justice for the Time being to admit. One of which Patents is to Lord *John Berkley*, reciting, That whereas *George Duncumbe* then held the Office of Clerk of the Treasury by the Nomination and Appointment of the Chief Justice *Finch*, to hold so long as Chief Justice *Finch* should continue Chief Justice. And that the same *John Finch* had agreed with the King, or others, for the King not to grant that Office to any Person, or put any in without the King's Command; and from Time to Time to grant it to such Person as the King shall name.

Then Grants the Office of Clerk of the Treasury to *John Berkley Esq;* (afterwards Lord *Berkley*) for his Life, to hold (when it should fall void) for his Life with all Fees, &c. And by the same Patent Names and Appoints him to the said Office.

And Commands by the same Patent, as well the said *John Finch* then Chief Justice, as every other Person that afterwards should be Chief Justice of that Court, as the same should become void, to admit the said Lord *Berkley* under the Chief Justice, to that Office. And that these Letters Patents should be to the said *John Finch*, and every succeeding Chief Justice a sufficient discharge for their so doing.

Hill. 16 Car. 1. Chief Justice *Littleton* is made Lord Keeper, and the Kings then Attorney, Sir *John Banks*, is made Chief Justice.

In the Parliament then holden Petitions against these Patentees, with the Schedule of them annexed, is exhibited. Patentees and their Council all heard. The Opinion of the Judges of the Kings Bench and Barons of the Exchequer; Sir *John Brampton* then Chief Justice of the Kings Bench, Sir *Humphrey Davenport* then Chief Baron, are then taken under their hands; and then

The Lords in Parliament declare, that the Rights and Privileges truly incident to the Place of Chief Justice of the Common Bench should be restored and continued. And do Unanimously resolve and order that these Offices, naming the Office of Clerk of the Treasury, do of right belong to the disposition of the Chief Justice for the time being. And that the Grants made by Letters Patents, were all Illegal and void in Law. And further ordered that these Patents should be brought to the House.

In this Order, and in the Opinion of the Judges concerning the Clerk of the Treasury, it is expressed,

That the Office of Clerk of the Treasury is grantable by the Chief Justice for the time being, to such persons as he shall nominate to continue only during the time he continueth Chief Justice.

Concerning one of these Offices. The Office of *Exigenter* in the vacancy of the Chief Justices place, granted by Queen *Mary* to one *Colshall* for Life, in the Rep. of the Case in *Dyer* 175. The Resolution is in these Words.

Quod ad Dominam Reginam Donatio Officii predicti, nullo modo & nullo tempore pertinet, aut pertineat sed tantummodo ad Dispositionem Capitalis Jusficiarii, pro tempore existentis ut incidens Inseparabilis ad personam dicti Capitalis Jusficiarii spectans, Et hoc Ratione Prescriptionis & usus.

2 Februarii, 37 Car. 2. four days before his late Majesties death, another Patent was granted to his Grace the Duke of *Grafton*, consisting as the Lord *Berkleys* and the rest of the forementioned Patents did of two Parts.

1. A Grant of the Office of Clerk of the Treasury to the Lord Duke for his Life.

2. A Precept and Mandate to every person that after the then Chief Justice *Jones* removed, should be Chief, to admit the said Lord Duke or cause him to be admitted and to put and institute him in possessionem Corporalem dicti officii.

And to grant and confirm it to him, to be exercised by him or his Deputy. And to hold it in as ample manner and form, as *John* late Lord *Berkley* held the same.

Easter Term last was three years, Chief Justice *Jones*, who had put in Mr. *Tench* his Clerk of the Treasury, was removed, and Chief Justice *Beddingfield* came in, and as Mr. *Tench* hath affirmed, my Lord Duke and Mr. *Tench* applied to Chief Justice *Beddingfield*, and shewed him his Graces Patent, *Tench* delivers him the Keys, he is acquainted that his Grace had deputed Mr. *Tench*, and Chief Justice *Beddingfield* re-delivers the Keys to Mr. *Tench*.

It is Probable that Chief Justice *Wright* and Chief Justice *Herbert* did the like.

Upon Inquiry, this Office was never granted by any Chief Justice, by Deed or Writing, but his admitting, allowing or approving, is all that is done. No other Ceremony requisite.

From these Premises it Appears.

1. That the Kings Grant to my Lord *Berkley* was Illegal and void, and so resolved by the Lords in Parliament and the Judges.

2. That the Office belongeth to the Chief Justice as inseparably incident to his Person. And if inseparably incident, he cannot be disseised or dispossessed of it, If he could 'tis not inseparable.

3. That the Patent to my Lord *Berkley* of this Office, as well as the other Patents of the other Offices, do not rely upon the Kings right, but upon the Covenant and Agreement with the said Chief Justices to admit and put in the persons the King should nominate. Else why in all these Grants is the Agreement mentioned and the Mandatory Clauses to the Chief Justices for the time being, to admit, put in, Grant and Confirm.

4. That by the Act of Parliament, Indentures of Covenant, Patents, Opinions of the Judges, and Resolutions in Parliament, The Clerk of the Treasury ceaseth with the removal of the Chief Justice that put him in. The words of the Act of the opinion of the Judges and Resolution are express herein. And what other reason is there in the Patents for the Mandatory Clauses not only to the then present but to all, and every the Chief Justice that afterwards should be, to admit, put in, Grant and Confirm. This shews that he is out by removal of the Chief Justice that admitted him in. And must be new put in, or else hath neither right or possession.

5. Besides the possession of Offices do in Law follow the right, and he that hath the right, hath in Law the possession, and cannot be disseised or dispossessed thereof without his own consent, and at his election.